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NOT TO BE PUBLISHED

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

THIRD APPELLATE DISTRICT

(Sacramento)

CITY OF PETALUMA et al., Plaintiffs and Appellants, v. KEELY BOSLER, as Director, etc., et al., Defendants and Respondents.	C082339 (Super. Ct. No. 34201580002064CUWMGDS)

In this case we consider whether, under the statutory scheme for dissolving and winding down the State of California's former redevelopment agencies, defendant Department of Finance (Department) abused its discretion in finding plaintiffs City of Petaluma (City) and the successor agency to the City's former redevelopment agency Petaluma Community Development Commission (Successor Agency) failed to meet the deadline for reentering a cooperative agreement between the City and its former redevelopment agency. The parties agree that agreements reentered on or after June 27, 2012, are unenforceable. The trial court determined the agreement in question was not

reentered into until September 18, 2012, and was therefore unenforceable. We shall affirm the judgment.

FACTUAL AND PROCEDURAL BACKGROUND

General Principles Governing Repayment

In June 2011 the dissolution law was enacted. It froze the activities of redevelopment agencies, prohibiting them from taking out or accepting loans from other public agencies for any purpose. (Health & Saf. Code, § 34162, subd. (a)(4);[1] see *City of Cerritos v. State of California* (2015) 239 Cal.App.4th 1020; *City of Brentwood v. Campbell* (2015) 237 Cal.App.4th 488 for summaries of the dissolution law.)

Successor agencies to the former redevelopment agencies are required to wind down redevelopment agency affairs expeditiously. (§§ 34173, 34177, subd. (h).) During this wind down, successor agencies may spend money only for enforceable obligations defined in section 34171, subdivision (d). (§ 34177, subd. (a)(1) & (3).) These obligations include bonds, loans, payments required by law, judgments or settlements, and some agreements or contracts. (§ 34171, subd. (d)(1).) Excluded are agreements, contracts or arrangements between the city, county, or city and county that created the redevelopment agency and the former redevelopment agency. (§ 34171, subd. (d)(2).)

In order to pay on an enforceable obligation, a successor agency must apply to the Department for approval, via a recognized obligation payment schedule (ROPS). (§§ 34171, subd. (h), 34177, subds. (a), (*l*)(1) & (2).) After successor agencies prepare the ROPS the Department reviews it to determine the payments meet the definition of an enforceable obligation. If a successor agency disagrees with the Department's determination, it is entitled to a review. (§§ 34177, subd. (m), 34179, subd. (h).)

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[1] All further statutory references are to the Health and Safety Code unless otherwise designated.

Under section 34178, subdivision (a), "agreements, contracts, or arrangements between the city or county, or city and county that created the redevelopment agency and the redevelopment agency are invalid and shall not be binding on the successor agency." However, section 34178 also allows certain redevelopment agency agreements to be reentered into by the successor agency, after receiving approval from an oversight board. (§ 34178, subds. (a), (c).)

On September 22, 2015, the Legislature amended the reentry statutes to prohibit reentry on or after June 27, 2012, and made the amendment retroactive. (Sen. Bill No. 107 (2015-2016 Reg. Sess.); Stats. 2015, ch. 325, § 10.) Agreements entered or reentered on or after that date are void. (§ 34178, subd. (c).)

ROPS Claims at Issue

The parties dispute whether an agreement between the City and the redevelopment agency was reentered before June 27, 2012, the Legislative imposed deadline. Accordingly, we consider the sequence of events.

The City and redevelopment agency entered into a cooperative agreement on January 31, 2011, in which the redevelopment agency agreed to pay the City $45 million for several projects. The Legislature enacted the dissolution law on June 28, 2011. (*City of Brentwood v. Campbell*, *supra*, 237 Cal.App.4th at p. 494.)

On January 9, 2012, the City elected to serve as the successor agency to the former redevelopment agency. On April 16, 2012, the Successor Agency adopted ROPS I, covering January 1, 2012, through June 30, 2012. ROPS I listed five items for which the Successor Agency requested funding, citing the cooperative agreement as the enforceable obligation.

The Successor Agency's oversight board adopted a resolution approving ROPS I on April 25, 2012. The oversight board also approved a reentry of the cooperative agreement:

"5. [I]n the event that the Cooperative Agreement between the City of Petaluma and the former RDA dated January 31, 2011 is determined by the State Department of Finance to be invalid, the programs and obligations contained in such agreement should be authorized to continue for the purpose of funding the items listed as Items 12-15 and 24 . . . Accordingly, the Oversight Board hereby authorizes and directs that the 2011 Cooperative Agreement and/or the programs and obligations there under shall continue, and that the Successor Agency to take any and all steps as may be necessary to effectuate the intent of the 2011 Cooperative Agreement . . .

"7. The Successor Agency is authorized and directed to enter into any agreements and amendments to agreements necessary to memorialize and implement [t]he specific agreements and obligations in the ROPS and herein approved by the Oversight Board."

The following day, the Successor Agency emailed ROPS I to the Department with a cover memo explaining that staff "will be working with our attorney to process a new Cooperative Agreement that will be the basis for those items on our ROPS that were only documented through the City/Successor Agency Cooperative Agreement."

On May 7, 2012, the Successor Agency adopted ROPS II, covering July 1, 2012, through December 31, 2012. The oversight board approved ROPS II on May 9, 2012. The same items from the cooperative agreement listed on ROPS I were listed on ROPS II, citing the cooperative agreement as the enforceable obligation.

The Department issued a determination letter on ROPS I on May 11, 2012, denying the cooperative agreement items. On May 23, 2012, the Department denied the same items in ROPS II. The Department determined these items were for a "Cooperative Agreement between the City and Former RDA, HSC section 34171(d)(2) states that all agreements, contracts, or arrangements between the city that created the redevelopment agency (RDA) and the former RDA are not enforceable." On May 24, 2012, the Successor Agency informed the Department that "the specific 're-entered' contract is scheduled for approval by the City as Successor Agency on June 18, 2012, and will be

scheduled for consideration by the Oversight Board soon thereafter. If the Oversight Board approves the contract it will be added to the ROPS."

On June 18, 2012, the City and Successor Agency adopted resolutions providing:

"Whereas, following consideration of a Successor Agency staff presentation . . . the Oversight Board authorized and directed that the Original Cooperative Agreement and/or the programs thereunder shall continue, and that the Successor Agency shall take any and all steps as may be necessary to effectuate the intent of the Original Cooperative Agreement and the obligations and programs thereunder; and,

"Whereas, the City and the Successor Agency desire to enter into an Amended and Restated Cooperative Agreement (the 'Agreement') to set forth the construction activities and services that the City will undertake or make available in furtherance of the completion of the Public Improvements and the other programs set forth in the Agreement, and to provide that the Successor Agency will pay for or reimburse the City for actions undertaken and costs and expenses incurred in connection with such work, programs and services; and

"Whereas, the Agreement is intended to amend and restate the Original Cooperative Agreement . . . ."

On August 22, 2012, the oversight board authorized the execution of an amended and restated cooperative agreement between the City and Successor Agency. The Successor Agency also submitted ROPS III, again requesting funding for the five items related to the cooperative agreement

The City and Successor Agency on September 18, 2012, executed an amended and restated cooperative agreement. On December 18, 2012, the Department issued a determination letter denying the five disputed cooperative agreement items.

In September 2015 the oversight board approved ROPS 15-16B, covering January 31, 2016, through June 30, 2016. This ROPS also included the five items. The Department on November 9, 2015, again denied the five items.

In April 2015 the City and Successor Agency filed a petition for writ of mandate and complaint for declaratory and injunctive relief. The petition sought an injunction requiring the Department to recognize the disputed ROPS's as enforceable obligations.

The trial court denied the petition. The trial court distilled the question before it: "[W]hether the City, Successor Agency, and Oversight Board all complied with the requirements of pre-June 27, 2012 section 34178, subdivision (a), and did so prior to June 27, 2012." The court considered the City and Successor Agency's arguments supporting timely compliance, but found: "The Oversight Board did not approve entry into the Amended and Restated Agreement until August 22, 2012, almost two months after the June 27, 2012 deadline. Further, the City and the Successor Agency did not execute the Amended and Restated Agreement until September 18, 2012, almost three months subsequent to the June 27, 2012 deadline. The Successor Agency and the City cannot be said to have 'entered' the Amended and Restated Agreement with Oversight Board approval prior to June 27, 2012." This appeal followed.

DISCUSSION

I

This appeal focuses on the application of statutes to facts. We review the trial court's determination de novo and exercise our independent judgment. (*Sacks v. City of Oakland* (2010) 190 Cal.App.4th 1070, 1082.) Our primary task is to ascertain and effectuate the intent of the Legislature, beginning with the words of the statute. We interpret the statutory language in accordance with its usual, ordinary meaning. If there is no ambiguity in the statute, the plain meaning prevails. (*Murphy v. Kenneth Cole Productions, Inc.* (2007) 40 Cal.4th 1094, 1103; *Hsu v. Abbara* (1995) 9 Cal.4th 863, 871.)

II

Section 34178, subdivision (a), states: "Commencing on the operative date of this part, agreements, contracts, or arrangements between the city or county, or city and

county that created the redevelopment agency and the redevelopment agency are invalid and shall not be binding on the successor agency; provided, however, that a successor entity wishing to enter or reenter agreements with the city, county, or city and county that formed the redevelopment agency that it is succeeding may do so subject to the restrictions identified in Subdivision (c), and upon obtaining the approval of its oversight board." However, section 34718 allows a successor agency and its sponsoring entity to reenter such agreements if the agreements are reentered before June 27, 2012. Agreements entered or reentered after that date are "ultra vires and void." (§ 34178, subd. (c).)

As the trial court noted, and the parties agree, the sole question before us is whether the disputed cooperative agreement was reentered into before June 27, 2012. The City and Successor Agency argue the cooperative agreement was reentered by the oversight board in April 2012, two months before the deadline. According to the City and Successor Agency, the oversight board's approval was all that was necessary to reenter the cooperative agreement under section 34178, subdivision (a).

The trial court considered this claim and found it ran afoul of the plain language of section 34178: "The section identifies a two-step process: (1) obtain oversight board approval; and (2) re-enter the agreement or enter a new agreement. The section does not provide that upon approval of the oversight board the agreement is automatically re-entered. The language provides that a Successor Agency 'wishing to . . . reenter into agreements with the city . . . *may do so* . . . upon obtaining approval of its oversight board.' (emphasis added.) Here, the City and the Successor Agency failed to actually enter or reenter an agreement prior to June 27, 2012."

The City and Successor Agency argue this imposes "a formalistic procedure that is nowhere detailed in the statute." We disagree with this analysis.

The Successor Agency, on April 16, 2012, adopted ROPS I listing the five items for which the Successor Agency requested funding, citing the cooperative agreement as

the enforceable obligation. On April 25, 2012, the oversight board adopted a resolution approving ROPS I and instructing the Successor Agency to take "any and all steps as may be necessary to effectuate the intent of the 2011 Cooperative Agreement." The Successor Agency emailed ROPS I to the Department on April 26, 2012, stating it would "be working with our attorney to process a new Cooperative Agreement that will be the basis for those items on our ROPS that were only documented through the City/Successor Agency Cooperative Agreement."

After the Department rejected the disputed items, on May 24, 2012, the Successor Agency informed the Department that "the specific 're-entered' contract is scheduled for approval by the City as Successor Agency on June 18, 2012, and will be scheduled for consideration by the Oversight Board soon thereafter. If the Oversight Board approves the contract it will be added to the ROPS." On June 18, 2012, the City and Successor Agency adopted resolutions authorizing an amended cooperative agreement subject to approval by the oversight board. The oversight board approved the amended agreement on August 22, 2012.

The sequence of events reveals the oversight board on April 25, 2012, approved ROPS I and directed the Successor Agency to take any and all steps necessary to effectuate the intent of the 2011 cooperative agreement. This satisfied section 34178's requirement that the Successor Agency must obtain oversight board approval. However, the oversight board did not authorize the amended cooperative agreement, also required by section 34178, until August 22, 2012, well outside the time parameter prescribed by section 34718.

III

The City and Successor Agency also argue that, under public contracting law, once a public entity's governing body authorizes a public entity to enter into a contract, it cannot be legally rescinded by the agency's governing body, even if the contract has not been formally executed. In support, they cite *Transdyn/Cresci JV v. City and County of*

San Francisco (1999) 72 Cal.App.4th 746 for the proposition that "an enforceable contract is formed at the time the contract is awarded . . . rather than at the time the contract is executed by the public entity." (*Id.* at p. 754.) Therefore, the execution of an agreement is a "ministerial step."

We agree with the trial court's assessment that, in contrast, "redevelopment law is unique in that valid contracts were invalidated by statute, and the statute provided the method by which those contracts could be revived. Here, section 34178 requires completion of a two-step process; it does not provide that Oversight Board approval results in an enforceable obligation."

IV

In the alternative, the City and Successor Agency contend they took additional steps beyond oversight board approval sufficient to satisfy section 34718, subdivision (a). The City and Successor Agency executed an amended and restated agreement on June 18, 2012, which "is sufficient to constitute revival of the Cooperative Agreement."

However, on June 18, 2012, the City and Successor Agency adopted resolutions authorizing an amended and restated cooperative agreement "subject to approval of Oversight Board." The oversight board did not approve the cooperative agreement until August 22, 2012.

V

Finally, the City and Successor Agency assert the Department lacks the authority to reject the approved cooperative agreement because "[the Department] rejected the Cooperative Agreement as not meeting the definition of 'enforceable obligation' despite the fact that the Oversight Board had approved it as provided under section 34178(a), and prior to enactment of AB 1484, which took away that authority." However, the 2015 amendments to section 34178 require an agreement and operate retroactively. (§ 34178, subd. (c).)

DISPOSITION

The judgment is affirmed. Department shall recover costs on appeal. (Cal. Rules of Court, rule 8.278(a)(1) & (2).)

RAYE, P. J.

We concur:

ROBIE, J.

BUTZ, J.